IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.09.2008

C O R A M

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

Contempt Petition No.387 of 2007

1.Amaravathi (deceased)
2.P.Seethalakshmi
3.V.Santhanalakshmi
4.N.Komala ... Petitioners
Vs.
1.Subramani
2.P.Sankara Narayanan
3.P.Surya Narayanan
4.Sivagami
5.Kumudhini ... Respondents

Petition filed under Section 11 of the Contempt of Courts Act, 1971 praying to punish the respondents for violating the orders of this Court in S.A.No.262 of 1993 dated 12.12.2006.

For Petitioners : Mr.R.V.Bibin

For Respondent 1 : Mr.Sai Bharath

For RR 2 and 3 : Mr.N.R.Gopalan

For Respondent 4 : No appearance

O R D E R

Heard the submissions made by Mr.R.V.Bibin, learned counsel for the petitioner, Mr.Sai Bharath, learned counsel for the first respondent and by Mr.N.R.Gopalan, learned counsel for respondents 2 and 3. There is no representation for the fourth respondent. The fifth respondent has not been served with notice in this contempt petition.

2.The petitioners herein were the appellants in Second Appeal No.262 of 1993. The respondents herein were the defendants 2 to 6 in the above said second appeal. The second appeal arose out of a suit filed by the deceased Thirupurasundariammal and the first respondent herein. After the death of the Thirupurasundariammal, the respondents 2 to 5 herein had been impleaded in the said second appeal. The above said suit had been filed for bare injunction. The parties litigated therein based on their respective claims of title to the suit property. Hence, the learned Single Judge who heard the second appeal, observed that it was proper for the respondents therein (respondents herein) to file a necessary suit for declaration. Besides making the said observation, the learned Single Judge also recorded the consent of the parties to the second appeal to maintain status quo till the end of March 2007 enabling the respondents herein to file such a suit within the said period. It was also observed therein that the parties could seek interim orders before the trial Court if such a suit was filed. With the said observations, the findings of the Courts below were set aside and the parties were directed

to workout their remedies in the new suit to be filed.

3.Contending that the suit property was a vacant land without any superstructure therein and that after the disposal of the said second appeal on 12.12.2006 the respondents started putting up constructions all of a sudden on 15.12.2006, the petitioners have come forward with the present contempt petition.

4.The learned counsel for the petitioners fairly concedes that no specific allegation has been made against the respondents 2 to 5 and hence, this Court has to necessarily come to the conclusion that no case of contempt has been made against the respondents 2 to 5. So far as the first respondent is concerned, the original contention of the petitioners happened to be that in the suit land concerned in the above said second appeal which remained a vacant site as on the date of the disposal of the second appeal, namely 12.12.2006, a building was constructed subsequent to the said date and the construction work was started on 15.12.2006. The said contention of the petitioners has been denied by the first respondent stating that a house was constructed long back in 2004 itself; that due to the objection made by the mother of the petitioners, Tamil Nadu Electricity Board refused to provide electricity service connection to the said building and that the first respondent had to approach this Court by way of a writ petition against the Electricity Board for mandamus in W.P.No.25017 of 2004.

5.In order to show that pursuant to the orders passed by this Court in the above said writ petition electricity service connection was given in 2004 itself and electricity charges were paid periodically, the first respondent has produced a copy of Electricity Consumption Card in the typed set of papers which goes to show that the electricity connection was given in 2004 itself. Similarly the first respondent has also produced copies of the property tax receipts pertaining to the first half of assessment year 2004-2005 and the subsequent periods which will go to show that property tax had been levied not only in 2004 but also in the month of July 2006, much earlier than the date on which the second appeal was disposed of. The same will make the averment made in the affidavit of the petitioners to the effect that the property remained a vacant site, an untenable and false one. Now after the first respondent has filed counter affidavit and the typed set of papers, the petitioners have come forward with a reply affidavit as if house was in existence prior to the date of disposal of the second appeal and additional constructions were made subsequent to the said date. But very fact that the petitioners have chosen to make an averment to the effect that the property remained a vacant site on 12.12.2006 will be enough to reject the present contention also.

6.In view of the same, this Court comes to the conclusion that the petitioners have not made out a case for contempt against the respondents and hence, the contempt petition deserves to be dismissed. Accordingly, the Contempt Petition is dismissed.

18.09.2008
Index : Yes/No

Internet : Yes/No

sgl

P.R.SHIVAKUMAR,J.

Sgl

Cont.P.No.387 of 2007

18.09.2008